

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF OKLAHOMA**

**FILED**

OCT 14 2009

WILLIAM B. GUTHRIE  
Clerk, U.S. District Court  
By \_\_\_\_\_  
Deputy Clerk

**GERALD W. CHADWICK,**

Petitioner,

v.

**GREG PROVINCE, Warden,**

Respondent.

**Case No. CIV 09-168-RAW-KEW**

**OPINION AND ORDER**

The respondent has filed a motion to dismiss petitioner's petition for a writ of habeas corpus for failure to exhaust state remedies for all his claims [Docket #11]. Petitioner responded to the motion [Docket #12] and filed a motion to amend the petition [Docket #13], asking the court to allow him to amend his petition to include only exhausted claims. The respondent alleges, however, that petitioner's proposed amended petition has deleted the claims from the original petition and raises only one new, unexhausted claim [Docket #14].

**ACCORDINGLY**, petitioner's motion to amend [Docket #13] is GRANTED, and petitioner is directed to file within twenty (20) days an amended petition for a writ of habeas corpus which raises only exhausted claims. *See Rose v. Lundy*, 455 U.S. 509, 520 (1982); *Harris v. Champion*, 48 F.3d 1127, 1131 (10th Cir. 1995). The respondent's motion to dismiss mixed petition [Docket #10] is DENIED. The respondent is directed to respond to the amended petition within thirty (30) days of its filing. The Court Clerk is directed to send petitioner a form for the amended petition. Petitioner's failure to file an amended petition

as directed will result in dismissal of this action for failure to exhaust state remedies.

**IT IS SO ORDERED** this 14<sup>th</sup> day of October 2009.



**KIMBERLY E. WEST**  
**UNITED STATES MAGISTRATE JUDGE**